13. Regulating Co-Ownership: The Content Question

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Chapter: (p. 503) 13. Regulating Co-Ownership: The Content Question

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All books in this flagship series contain carefully selected substantial extracts from key cases, legislation, and academic debate, providing able students with a stand-alone resource. This chapter discusses the internal regulation of co-ownership. It is concerned with the content question: the rights enjoyed by co-owners, including their rights and duties in relation to each other, and whether one co-owner can insist on a sale of the land against the wishes of another. The joint tenancy and the tenancy in common are two forms of co-ownership. The chapter explores the operation of survivorship in respect of a joint tenancy and the process through which a joint tenant may become a tenant in common through severance. Co-ownership is terminated once there is a sole legal and equitable owner. The process of partition can also terminate co-ownership. In both forms of co-ownership, the rights and duties of the co-owners are governed through the imposition of a trust of land, regulated by the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996). TOLATA 1996 contains a procedure enabling disputes relating to land held on trust to be determined by an application to court. The
chapter considers how the courts have resolved disputes between the
beneficiaries as to whether land should be sold. The chapter also
considers the relationship between TOLATA 1996 and ‘home rights’ (of
occupation) conferred by the Family Law Act 1996.

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